U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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FILE: LIN 07 147 52331 Office: NEBRASKA SERVICE CENTER Date: **NOV 19 2009**

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a special education teacher - autism. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director concluded that the petitioner was not eligible for the classification sought and that she had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, counsel submits a brief and additional evidence, most of which was already part of the record of proceeding. For the reasons discussed below, we concur with the director that the petitioner does not qualify for the classification sought, although we reach this conclusion not because the job does not require an advanced degree but because the petitioner does not have such a degree or its equivalent as defined at 8 C.F.R. § 204.5(k)(2). We further find that the petitioner has not established that she is an alien of exceptional ability, precluding her from establishing eligibility for the classification sought. Finally, we uphold the director's finding that the petitioner has not established that a waiver of the job offer would be in the national interest.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.

> (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience *in the specialty* shall be considered the equivalent of a master's degree." *Id.* (Emphasis added.)

The director concluded that the proposed employment, special education teacher, did not require a member of the professions holding an advanced degree. While not cited by the director, the regulation at 8 C.F.R. § 204.5(k)(4) provides the following:

> (i) *General.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation (if applicable), or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. To apply for Schedule A designation or to establish that the alien's occupation is within the Labor Market Information Program, a fully executed uncertified Form ETA-750 in duplicate must accompany the petition. The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.
>
> (ii) *Exemption from the job offer.* The director may exempt the requirement of a job offer, and thus of a labor certification . . ..

The requirement that the job offer must require a member of the professions holding an advanced degree or an alien of exceptional ability is found only at 8 C.F.R. § 204.5(k)(4)(i). The petitioner, however, seeks a waiver of that requirement pursuant to 8 C.F.R. § 204.5(k)(4)(ii). As the petitioner seeks to have the job offer waived, there can be no requirement that the proposed job require an advanced degree professional or an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(4)(ii) does not suggest that the petitioner must demonstrate that the proposed job requires a member of the professions holding an advanced degree or an alien of exceptional ability. Thus, we withdraw the director's concerns on this issue.

While not addressed by the director, of more concern is whether the petitioner herself is a member of the professions holding an advanced degree. The petitioner holds a bachelor's degree in business education from Kenyatta University. The petitioner holds a baccalaureate and her occupation falls

within the pertinent statutory and regulatory definitions of a profession. Section 101(a)(32) of the Act; 8 C.F.R. § 204.5(k)(2). At issue is whether she holds an advanced degree or its equivalent as defined at 8 C.F.R. § 204.5(k)(2). While she claims to have received a Master's degree in special education after the date of filing, that degree cannot be considered. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Rather, counsel has asserted that the petitioner qualifies as an advanced degree professional based on her five years of progressive post-baccalaureate experience. On the petitioner's self-serving curriculum vitae she lists several years of experience as a business teacher in Kenya and less than five years of special education experience in the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The regulation at 8 C.F.R. § 204.5(g)(1) provides, in pertinent part, that evidence of experience "shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien." It logically follows that where evidence is being submitted to demonstrate a sufficient amount of experience, the dates of employment must also be included.

As evidence of her employment in Kenya, the petitioner submitted (1) her 1989 Certificate of Registration from the Teachers Service Commission, (2) certificates of Merit from the Ministry of Education, Thika District, for accounting in 1997 and commerce in 1999, 2000 and 2001, (3) a November 14, 2001 letter from the Teachers Service Commission confirming that the petitioner was a "graduate teacher" at Mangu High School in Thika, (4) a February 25, 2000 letter from the Mangu High School thanking the petitioner for her hard work in 1999 and (5) a June 26, 2001 letter from [redacted] of the same school, confirming that the petitioner joined the school in May 1995. [redacted] asserts that the petitioner worked as a counselor, teacher, patron and Head of the Department of Business Education. [redacted] does not imply that the petitioner worked with autistic students or in another area of special education during this time. Thus, none of this post-baccalaureate experience was in the petitioner's current specialty, special education.

On her curriculum vitae, the petitioner indicates that she worked as an art and food instructor at a program for autistic adults from 2003 through 2006. The petitioner did not submit a letter from this employer. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of* California, 14 I&N Dec. at 190). The petitioner also indicated that she worked at the North Cobb Christian School as a teacher's assistant from January 2003 through July 2005 and as a special education instructor from January 2004 through 2005. Once again, this employment is not documented in the record other than as provided on her self-serving curriculum vitae and will not be considered. *Id.*

In addition, the petitioner claimed to have worked as a special education teacher for [redacted] Haven Academy as of February 2006. The petitioner submitted an undated letter from [redacted]

School Psychologist at Haven Academy. In this letter, [redacted] asserts that she has worked with the petitioner as a colleague "over the past three years" and confirms that the petitioner "is one of the faculty members with HAVEN Academy." This undated letter does not establish the exact dates of employment and is from a coworker rather than an administrator or human resources official.

In response to the director's request for additional evidence, the petitioner submitted several letters dated in early 2008 from administrators and coworkers at Barber Middle School confirming the petitioner's employment as a teacher at that school beginning in that school year.

The petition was filed on April 25, 2007. Thus, the petitioner must demonstrate at least five years of post-baccalaureate experience in special education as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. 45, at 49. Even if we concluded that the petitioner began working in special education in 2003 as claimed on her self-serving curriculum vitae, she could not establish five years of experience in that specialty as of April 25, 2007. As neither the petitioner's baccalaureate nor her five years of experience are in special education, the profession in which she proposes to work, the petitioner has not established that she is an advanced degree professional in her proposed occupation. We note that being a member of one profession does not entitle the alien to classification as a professional if she does not seek to continue working in the same profession. *See Matter of Shah,* 17 I&N Dec. 244, 246-47 (Reg'l. Comm'r. 1977). We are not persuaded that business education and special education are the same profession.

We acknowledge that counsel has also asserted that the petitioner qualifies as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." The petitioner claims to meet the following criteria at 8 C.F.R. § 204.5(k)(3)(ii).

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability*

Counsel asserts on appeal that the petitioner's baccalaureate in business education and six years of experience teaching in Kenya serve to meet this criterion. Regarding the petitioner's experience, the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A) requires the submission of academic records to meet this criterion. Nothing in this regulation suggests that evidence of experience may be submitted in lieu of

a degree, diploma, certificate or award from an educational institution. While post-baccalaureate experience may be equated to an advanced degree for purposes of eligibility as a member of the professions with an advanced degree, experience may not be substituted for education under this criterion for aliens of exceptional ability. We note that the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B) is a separate criterion relating to experience. Thus, we will only consider the petitioner's baccalaureate, her basic counseling skills course certificates from the Amani Counselling Centre and Training Institute in Nairobi and her computer course transcript from Kenyatta University, the only degrees, diplomas, certificates or other awards from an educational institution as of the priority date.

Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability. Thus, we must determine whether the petitioner's degree is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered in the field of special education.

The computer courses are not within the petitioner's area of claimed exceptional ability, special education or even education generally. We are not persuaded that a baccalaureate in business education and two counseling courses are indicative of a degree of expertise in special education significantly above that ordinarily encountered among special education teachers. In fact, the record contains several job announcements for special education teachers requiring a Master's degree.

In light of the above, the petitioner has not established that she meets this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(C) requires evidence of tens years of experience "in the occupation" proposed. As discussed above, the petitioner has not even documented five years of experience as a special education teacher, the occupation she seeks to pursue in the United States. Thus, she cannot meet this criterion.

A license to practice the profession or certification for a particular profession or occupation

Counsel asserts on appeal that the petitioner meets this criterion because she possesses a Georgia Educator Certificate in special education from the Georgia Professional Standards Commission. Section 203(b)(2)(C) of the Act provides that the possession of a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of exceptional ability. Thus, we must determine whether the petitioner's certificate is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered.

If the certification is required to teach special education in Georgia, it cannot be considered evidence that the petitioner has a degree of expertise above that ordinarily encountered in the field. Even if we

accepted that the petitioner meets this criterion, it is only one criterion. The evidence falls far short of establishing that the petitioner meets any other criterion.

Evidence of membership in professional associations

Counsel asserts that the petitioner meets this criterion based on her membership in Georgia Community Support and Solutions (GCSS), the Council for Exceptional Children (CEC) and the Georgia Association of Educators (GAE). The petitioner did not submit evidence of her membership in GCSS and the materials submitted about this entity indicate that it is a facility rather than a professional association. According to the materials submitted, CEC appears open to all special education professionals. According to the materials submitted, membership in the GAE appears open to all public school employees.

On appeal, counsel correctly notes that the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E) does not require membership in associations that require outstanding achievements. *Compare* 8 C.F.R. § 204.5(h)(3)(ii); 8 C.F.R. § 204.5(i)(3)(i)(B). That said, the evidence submitted to meet a given criterion must be indicative of or consistent with a degree of expertise significantly above that ordinarily encountered in the field if that regulatory standard is to have any meaning. We are not persuaded that the petitioner's membership in associations that appear open to *all* professionals in the petitioner's occupation are indicative of or consistent with exceptional ability as defined at 8 C.F.R. § 204.5(k)(2).

In light of the above, the petitioner has not established that she meets this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

On appeal, counsel asserts that the reference letters submitted serve to meet this criterion. We are not persuaded that letters solicited by the petitioner to support the petition constitute the necessary formal recognition contemplated by the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F). The only formal recognition in the record relates to the petitioner's recognition in business education in Kenya. These certificates of merit are not indicative of any degree of expertise in special education. Thus, the petitioner has not established that she meets this criterion.

As the petitioner has not demonstrated that she is an alien of exceptional ability, the issue of whether waiving the job offer requirement is in the national interest is moot. Nevertheless, we will follow the director's prudent course of also addressing whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest

by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, special education. The director then concluded that the proposed benefits of the petitioner's work would not be national in scope. As quoted by the director, *NYSDOT* provides:

> [P]ro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. Based on the above reasoning, the director concluded that the impact of the petitioner's work as a special education teacher would be so attenuated at the national level as to be negligible.

On appeal, counsel notes that autism is not a regional issue and that 1.5 million Americans may have some form of autism. Counsel further discusses the serious symptoms of autism and notes that there is no cure. As stated by counsel, autistic children require special teachers in structured programs that emphasize individual instruction and early intervention. Counsel then discusses the petitioner's duties as a special education program developer and teacher. Counsel notes that the petitioner's students must meet Georgia academic standards and those set forth in the No Child Left Behind Act. Counsel notes that the petitioner is responsible for developing ways "to improve her classroom and curriculum for her students in order to better control their behavioral outbreaks and overall, improve their learning ability." Counsel further asserts that the petitioner "was the first person in the United States" to study the results of [redacted] (the petitioner's academic advisor) and [redacted] Hess and adapt them to her own classroom. Counsel concludes that the petitioner has had success using this model, which will eventually be the subject of a website that "will truly make this a national revelation." Finally, counsel asserts that the petitioner's work will reduce the federal government costs for the care and support of autistic individuals.

Counsel is not persuasive. Most of counsel's assertions go to the substantial intrinsic merit of the petitioner's occupation, an issue that is not in contention. We are not persuaded that the petitioner can convert an occupation with an intrinsically local impact into one with a national scope simply by proposing to someday chronicle her work on a website that can be accessed nationally. Given the ease with which anyone can begin a website, holding otherwise would render the national scope requirement meaningless. Finally, the national prevalence of and costs associated with autism do not result in a determination that a single special education teacher will have an impact at the national level. Ultimately, the petitioner proposes to work at a single school at a time. Her primary responsibility will be to teach at that school. There is no indication she seeks to work for a national entity that develops curricula for special education teachers or trains teachers nationwide. Significantly, *NYSDOT* did not reach its conclusion regarding teachers by stating that education itself is a regional issue. 22 I&N Dec. at 217 n.3. In a similar vein, that decision did not state that the costs of failing to educate the nation's children would be a regional cost. *Id.* Rather, that decision concluded that a single teacher's impact at the national level would be negligible. As such, counsel's assertions that autism is not a regional concern and that its costs are a national concern are irrelevant. It remains that a single special education teacher's impact at the national level would be negligible.

In light of the above, we concur with the director that the petitioner has not demonstrated that her work as a teacher will have benefits that are national in scope.

The final issue is to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. At the outset, we note that the petitioner submits evidence on appeal from the *Journal of Special Education* providing that

"there is a critical shortage of special education teachers in the United States." Counsel concludes: "The position is of such great importance and the labor market is substantially smaller than the demand for such specialized professions such as [the petitioner] that she should not have to have a permanent job offer or have an employer test the labor market with the labor certification application process." *NYSDOT*, however, states that a labor shortage claim is not an argument against the alien employment certification process. 22 I&N Dec. at 220. Rather, such a claim should be tested through that process. *Id.* The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The record contains no work by the petitioner that has been disseminated at the national level, such as studies in autism education published in peer-reviewed journals or presented at nationally attended seminars or published curricula authored by the petitioner and adopted or considered by various school jurisdictions nationwide. Rather, the petitioner relies exclusively on reference letters solicited by the petitioner in support of the petition. The letters are all from the petitioner's close circle of colleagues and three parents of her students. The director concluded that the letters were insufficient and that the record lacked evidence of the petitioner's influence in special education such as might be demonstrated by the methods of [redacted] and [redacted] applied by the petitioner in her own classroom.

On appeal, counsel asserts that the petitioner's classrooms serve as a model and training rubric for Cobb County and neighboring counties and that the petitioner's work substantially benefits the country's understanding and means of instructing students with autism and severe behavioral disorders.

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

In evaluating the reference letters, we note that letters containing mere assertions of talent and ability are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are the most persuasive.

While studying for her Master's degree, the petitioner was a student of [redacted]. According to [redacted] during the 2006-2007 school year, the petitioner "took a leading pioneering position in the implementation of 'The Model Classroom' which she did following recommendations and guidelines in the tool 'Enhancing Instructional Contexts for Students with Autism Spectrum Disorders' (EIC-ASD)." The record contains this manuscript, which was authored by [redacted] and [redacted] with no citation, acknowledgement or other reference to the petitioner. According to [redacted], the petitioner also implemented this program at Barber Middle School in the 2007-2008 school year. This work postdates the petition and cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Regardless, the petitioner has never explained how implementing someone else's work constitutes evidence of her own impact in the field. Significantly, even original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

[redacted], the principal at Barber Middle School, confirms that the petitioner implemented an autism unit classroom and that her students will be tested at grade level. [redacted] concludes that the petitioner is responsible for teaching her students grade level standards. [redacted] the petitioner's supervisor at Barber Middle School, notes that the petitioner "does not deviate from teaching the Georgia Standards and The Georgia Alternative Curriculum." Neither [redacted] nor [redacted] explains how the petitioner, prior to the date of filing, had impacted the field of special education at the national level.

[redacted], a teacher at Barber Middle School, asserts that the petitioner's "remarkable contribution" is evidenced through her "commitment, extra effort and exemplary work which has yielded excellent academic results in [the] form of student's [sic] results." The results referenced by [redacted], however, are those of the petitioner's business students in Kenya, not her special education students. Regardless, not every competent teacher whose students succeed is eligible for a national interest waiver of the job offer. Regarding the petitioner's work in special education, [redacted] asserts that the petitioner's work implementing the ideas of [redacted] and [redacted] "has opened doors for other teachers since this program has been used to train other teachers both in the [*sic*] Cobb County and outside without which the Special Education and education sector in general could be comprised [*sic*]." [redacted] affirms her personal observation of the effectiveness of the EIC-ASD Model Classroom program. Other letters from Cobb County faculty, such as teacher [redacted] and speech language pathologist [redacted] confirm that the petitioner's classroom has impacted the schools where she has taught. These letters, however, do not confirm the petitioner's influence at the national level.

The record shows that the petitioner is respected by her colleagues and has made useful contributions to the schools where she has taught. It does not follow, however, that every special education teacher implementing a successful classroom model developed by someone else inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition with a new priority date by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.